

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

FILED
U.S. DIST. COURT
SAVANNAH DIV.

2007 AUG 22 P 4:44

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SO. DIST. OF GA.

WILMART MARTIN, JR.,

Petitioner,

v.

FRED BURNETTE,

Respondent.

Case No. CV607-036

REPORT AND RECOMMENDATION

Before the Court is respondent's motion to dismiss petitioner's § 2254 petition for habeas relief. Doc. 5. Petitioner has not responded to respondent's motion.

In the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, Stat. 1214, Congress amended the federal habeas statute to require that a second or successive application be certified by a panel of the appropriate court of appeals:

Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

28 U.S.C. § 2244(b)(3)(A).

The Seventh Circuit held that this provision “is an allocation of subject-matter jurisdiction to the court of appeals. A district court *must* dismiss a second or successive petition, without awaiting any response from the government, unless the court of appeals has given approval for its filing.” Nunez v. United States, 96 F.3d 990, 991 (7th Cir. 1996) (emphasis in original). The Eleventh Circuit has reached the same result. Hill v. Hopper, 112 F.3d 1088, 1089 (11th Cir. 1997) (finding district court lacked jurisdiction to consider second § 2254 petition); In re Medina, 109 F.3d 1556, 1561 (11th Cir. 1997) (holding district court properly denied successive petition because movant neglected to obtain certificate from federal appellate court authorizing consideration of motion).

The record indicates that petitioner filed a § 2254 petition on August 12, 1996, challenging his Evans County conviction. CV696-138, doc. 1. The district judge dismissed the petition on April 3, 1998. Id. at doc. 15. Petitioner filed a second § 2254 petition on October 21, 1999, which the district judge dismissed as successive on September 25, 2000. CV699-178, doc. 15. Petitioner then filed the instant petition challenging the same

conviction. Doc. 1. Because the instant petition is successive, this Court is not at liberty to consider it. Accordingly, petitioner's latest § 2254 petition should be DISMISSED.

**SO REPORTED AND RECOMMENDED this 22nd day of
August, 2007.**


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA

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Case No. CV607-036

ORDER

After a careful de novo review of the record in this case, the Court concurs with the Magistrate Judge's Report and Recommendation, to which objections have been filed. Accordingly, the Report and Recommendation of the Magistrate Judge is adopted as the opinion of the Court.

SO ORDERED this ____ day of _____, 2007.

**B. AVANT EDENFIELD
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF GEORGIA**

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SO ORDERED this ____ day of _____, 2007.

**B. AVANT EDENFIELD
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF GEORGIA**